TORTS—RAILROADS—LIABILITY OF LICENSOR OF USE OF TRACK TO ITS EMPLOYEE FOR LICENSEE'S NEGLIGENCE.—The A and B railway companies exercised a joint use of certain tracts owned by the A company. An employee of the A company, in making up a train for the A company, was killed by the negligence of employees of the B company in shoving a car against the cars composing the train, without warning and with great force. An action was brought against the A company. *Held*, the A company is not liable for the acts of negligence of the B company, without a showing that its duty as employer has been violated. *Hunsaker's Adm'x* v. *Chesapeake, etc., R. Co.* (Ky.), 215 S. W. 552.

As to the nature and extent of the liability of a lessor or licensor of a railroad to employees of the lessee or licensee and members of the public for acts of negligence and nonfeasance on the part of the lessee or licensee of the railroad, the courts are not altogether in accord. See *Nugent* v. *Boston, etc., R. Co.*, 80 Me. 62, 12 Atl. 797, 6 Am. St. Rep. 151; *Lee* v. *Southern Pacific R. Co.*, 116 Cal. 97, 47 Pac. 932, 38 L. R. A. 71, 58 Am. St. Rep. 140, and note; *Chicago, etc., R. Co.* v. *Hart*, 209 Ill. 414, 70 N. E. 654, 66 L. R. A. 75; *Virginia Midland R. Co* v. *Washington*, 86 Va. 629, 10 S. E. 927, 7 L. R. A. 344; *Harden* v. *North Carolina R. Co.*, 129 N. C. 354, 40 S. E. 184, 55 L. R. A. 784, 85 Am. St. Rep. 747.

But where the injured person is a servant of the lessor or licensor the situation is different. The relation between the lessor or licensor and his own servant is purely that of employer and employee. Hence, the lessor or licensor is liable only as employer. An engineer in the employ of the owner of a railroad was injured in a collision with a train of another company using a part of the same road under a lease from the owner. The engineer was not allowed to recover damages from the owner of the road because the collision had occurred entirely through the negligence of the lessee, and this negligence the owner could not have foreseen. *Clark* v. *Chicago, etc., R. Co.*, 92 Ill. 43. See also *Georgia Railroad & Banking Co.* v. *Friddell*, 79 Ga. 489, 7 S. E. 214.

A legislative enactment providing that if a lease or sale be made of the franchise or property of a corporation the lessee or grantee shall take such franchise or property subject to any of the liabilities of the lessor or grantor at the time existing and enforceable against the franchise or property, does not give a personal action where none existed before. *Lee* v. *Southern Pacific R. Co., supra.*

The decision in the instant case seems sound upon reason and authority.

TORTS—NEGLIGENCE—MANUFACTURER'S LIABILITY WHERE THERE IS NO PRIVITY OF CONTRACT.—The defendant, a manufacturer of air rifles, who advertised them as harmless instruments of amusement, neglected to examine his product properly, and one of the air rifles came into the hands of a retailer loaded. The plaintiff, a saleswoman in the retailer's store, was injured by the discharge of the air rifle in the hands of a prospective purchaser, both being ignorant that the weapon was loaded. The plaintiff brought an action to recover for this negligence

on the part of the defendant. *Held*, the defendant is liable. *Herman* v. *Markham Air Rifle Co.* (D. C.), 258 Fed. 475.

It is clear by the great weight of authority that, in general, a manufacturer, in the absence of fraud or concealment on his part of latent defects and dangers in an article, is not liable for injuries caused by such an article to third persons with whom he has no privity of contract. Thus, where the defendant contracted with the Postmaster General to furnish and keep in repair a mail coach, and the coach broke down by reason of his negligence, and injured the driver, it was held that the defendant was not liable to the driver because there was no privity of contract between them. *Winterbottom* v. *Wright*, 19 M. & W. 109. However, if there is any fraud or concealment of such defect by the defendant, he is liable. *Kuelling* v. *Lean Mfg. Co.*, 183 N. Y. 78, 75 N. E. 1098 (reversing same case, 88 App. Div. 309, 84 N Y. Supp. 622).

The outstanding exception to this general rule arises where the articles involved are imminently dangerous, such as drugs, unwholesome foods, explosives, firearms, etc. The courts make up for lack of contractual privity between the parties by substituting for it the duty owed to the public by the manufacturer or vendor of such articles. *Tomlinson* v. *Armour*, 75 N. J. L. 748, 70 Atl. 314, 19 L. R. A. (N. S.) 923; *Cunningham* v. *Pease House Furnishing Co.*, 74 N. H. 435, 69 Atl. 120, 124 Am. St. Rep. 979, 20 L. R. A. (N. S.) 236. Thus where a poisonous drug was sold under the name of a harmless medicine, one injured by taking the drug without fault or negligence on her part was allowed a recovery against the manufacturer who neglected to label the drug properly. *Thomas* v. *Winchester*, 6 N. Y. 396, 57 Am. Dec. 455. The same principle has been applied to guns, which, if defective, are imminently dangerous to human life. *Levy* v. *Langridge*, 4 M. & W. 337 (affirming same case, 2 M. & W. 519). The trend of modern decisions, not without opposition on the part of some courts, however, has been to extend the doctrine of imminently dangerous articles to automobiles, holding manufacturers liable for injuries caused by defects in their machines. *MacPherson* v. *Buick Co.*, 217 N. Y. 382, 111 N. E. 1050, Ann. Cas. 1916C, 440, L. R. A. 1916F, 696; *Olds Motor Works* v. *Shaffer*, 145 Ky. 616, 140 S. W. 1047, Ann. Cas. 1913B, 689, 37 L. R. A. (N. S.) 560. But see *contra*, *Cadillac Motor Car Co.* v. *Johnson*, 137 C. C. A. 279, 221 Fed. 801, L. R. A. 1915E, 287, Ann. Cas. 1917E, 581.

In Virginia, manufacturers of imminently dangerous articles are held to a strict liability for injuries caused by their negligence in regard to such articles. *Standard Oil Co.* v. *Wakefield*, 102 Va. 824, 47 S. E. 830.

For a detailed discussion of the liability of manufacturers and vendors in the sale of drugs, see 1 VA. LAW REV. 166.

TRADE UNIONS—INJUNCTIONS—BOYCOTTING.—The defendants, members of a teamsters' union, placed the plaintiff, their employer, on their black-list as an employer who was unfair to labor. The employer had neither ad-